

Department of Mental Health Periodic Rule Review

July 1, 2016 – June 30, 2017

Department of Mental Health Periodic Rule Review

Rule Title	Rule Purpose	Date of adoption or amendment	Is the rule necessary?	Is the rule obsolete?	Does rule overlap, duplicate or conflict with other rules?	Can a less restrictive or more narrowly tailored rule accomplish the same purpose or adequately protect the public?	Can rule be modified to reduce regulatory burden on individuals, businesses, or political subdivisions?	Does the rule properly incorporate material by reference?	For rules affecting small business: does the public purpose or interest for adopting justify continued existence of rule?	Number of comments received on rule	Page number of Appendix for Response
9 CSR 10-1.010 General Organization	This rule describes the organization of the department and where the public may obtain information about the department as required by section 536.023, RSMo 1986.	10/30/2002	Y	No. However, amendments are needed to update division names and overall structure of the department.	Yes, reference to division names and offices conflict with other rules.	Yes, the rule can be narrowed as divisions have been consolidated.	N	Y	Y	1	3
9 CSR 10-5.180 Advance Directive	This rule defines terms and establishes policies and procedures to be followed by all facilities operated by the Department of Mental Health and by other department-related facilities for assuring the rights of residents and patients to participate in and direct health care decisions affecting them.	4/8/1993	Y	No. However, a committee has been formed to work towards updating rule for application to community service settings.	N	Possibly. DMH is reviewing the rule to see if less restrictions should be in place for community based service models.	N	Y	Y	1	1
9 CSR 10-5.190 Background screening for Employees and Volunteers	This rule establishes standards for obtaining background screening for certain staff and volunteers in residential facilities, day programs or specialized service operated or funded by the Department of Mental Health.	9/30/2004	Y	No. However, the department is in the process of amending this rule to update terminology and disqualifying crimes that are eligible for an exception.	N	N	N	Y	Y	None	N/A
9 CSR 10-5.200 Report of Complaints of Abuse, Neglect, and Misuse of Funds/Property	This rule prescribes procedures for reporting and investigating complaints of abuse, neglect, and misuse of funds/property in an agency that is licensed, certified, accredited, in possession of deemed status, and/or funded by the DMH as required by sections 630.135, 630.167, 630.168, 630.655, and 630.710, RSMo. The rule also sets forth due process procedures for persons who have been accused of abuse, neglect, and misuse of funds/property.	5/30/2009	Y	N	N	N	N	Y	Y	1	1

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9 CSR 10-5.206 Report of Events	This rule prescribes procedures for documenting, reporting, analyzing and addressing certain events that affect individuals in residential facilities, day programs or specialized services that are licensed, certified or funded by the Department of Mental Health as required by sections 630.005, 630.020, 630.165, 630.167 and 630.655, RSMo.	2/28/2006	Y	No, a committee is updating the rule for application to the community.	N	Possibly. DMH is reviewing rule to see if less restrictions should be in place for reporting of events from community providers.	N	Y	Y	1	1
9 CSR 10-5.210 Exceptions Committee Procedures	This rule establishes procedures for requesting an exception from the administrative rules of the DMH.	10/30/2004	Y	N	Yes. 9 CSR 10-5.210(6) conflicts with section 630.170.4, RSMo in regards to how often a repeat request may be received.	N	N	Y	Y	None	N/A
9 CSR 10-5.220 Privacy Rules of Health Insurance Portability and Accountability Act of 1996	This rule alerts providers to the possible HIPAA Privacy Rule requirements if the provider has determined that it is a covered entity as defined by HIPAA. Once that is established, this rule lists policies and procedures that the HIPAA Privacy Rule requires for each covered entity.	10/30/2003	Y	No. However, federal HIPAA regulations have been amended since this regulation became effective, so the rule needs to be updated.	Yes. This regulation overlaps with federal HIPAA regulations at 45 CFR parts 160 and 164.	N	N	No. 9 CSR 10-5.220(2)(B) incorrectly cites to 45 CFR 164.501 for the definition of PHI. This citation should be amended to reflect 45 CFR 164.103.	Y	None	N/A
9 CSR 10-5.230 Hearings Procedures	This rule sets out procedures for requesting and conducting hearings before the Department of Mental Health Hearings Administrator as provided for in 9 CSR 10-5.200.	5/30/2009	Y	N	N	N	N	No. 9 CSR 10-5.230(7)E incorrectly cites to section 537.077, RSMo. This citation should be amended to reflect section 536.077, RSMo.	Y	None	N/A

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9 CSR 10-5.240 Health Home	This rule prescribes a Health Home as an alternative approach to the delivery of health-care services that promises better experience and better results than traditional care. This rule also establishes the payment methodology for those Community Mental Health Centers (CMHCs) participating as a Health Home.	6/29/2012	Y	No, DMH is in the process of amending the rule to incorporate new terminology and practices.	N	N	N	Y	Y	None	N/A
9 CSR 10-5.250 Screening and Assessment for Behavioral Changes	This rule establishes guidelines for the screening and assessment of individuals receiving services from state owned or operated facilities to determine whether changes in behavior or mental status are caused by or associated with a medical condition.	11/30/2016	Y	N	N	N	N	Y	Y	None	N/A
9 CSR 10-7.010 Treatment Principles and Outcomes	This rule describes treatment principles and outcomes in Alcohol and Drug Abuse Treatment Programs, Comprehensive Substance Treatment and Rehabilitation Programs (CSTAR), Compulsive Gambling Treatment Programs, Community Psychiatric Rehabilitation Programs (CPRP), and Psychiatric Outpatient Programs. The performance indicators listed in this rule are examples of how a treatment principle can be met and do not constitute a list of specific requirements. The indicators include not only data that may be compiled by a program but also circumstances that a surveyor may observe or monitor, consumer satisfaction and feedback compiled by the department, and other data that the department may compile and distribute. A program may also use additional or other means to demonstrate achievement of these principles and outcomes.	10/30/2001	Y	No. DMH has a committee that is reviewing and updating the rule to reflect current practices in the behavioral health field.	N	The review committee is reviewing the rule to determine if less restrictive or more narrowly defined language can be used while still assuring quality services in the community.	N	Y	Y	None	N/A

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9 CSR 10-7.020 Rights, Responsibilities and Grievances	This rule describes the rights of individuals being served and grievance procedures in Alcohol and Drug Abuse Treatment Programs, Comprehensive Substance Treatment and Rehabilitation Programs (CSTAR), Compulsive Gambling Treatment Programs, Substance Abuse Traffic Offender Programs (SATOP), Required Education Assessment and Community Treatment Programs (REACT), Community Psychiatric Rehabilitation Programs (CPRP), and Psychiatric Outpatient Programs.	3/30/2003	Y	No. However, a committee is reviewing and amending the rule to reflect current terminology and regulations.	N	N	N	Y	Y	None	N/A
9 CSR 10-7.030 Service Delivery Process and Documentation	This rule describes requirements for the delivery and documentation of services in Alcohol and Drug Abuse Treatment Programs, Comprehensive Substance Treatment and Rehabilitation (CSTAR), Compulsive Gambling Treatment Programs, Community Psychiatric Rehabilitation Programs (CPRP), and Psychiatric Outpatient Programs.	6/30/2002	Y	No. However, a committee is reviewing and amending the rule to reflect current terminology and behavioral health service delivery practices.	N	N	Possibly. Committee is reviewing to determine if less restrictive rules can be written while still assuring quality community-based services.	Y	Y	None	N/A
9 CSR 10-7.040 Quality Improvement	This rule describes requirements for quality improvement activities in Alcohol and Drug Abuse Programs, Comprehensive Substance Treatment and Rehabilitation Programs (CSTAR), Compulsive Gambling Treatment Programs, Substance Abuse Traffic Offender Programs (SATOP), Required Education Assessment and Community Treatment Programs (REACT), Community Psychiatric Rehabilitation Programs (CPRP), and Psychiatric Outpatient Programs.	10/30/2001	Y	No. However, a committee is reviewing and amending the rule to reflect current terminology and quality improvement practices for behavioral health.	N	N	N	Y	Y	None	N/A

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9 CSR 10-7.050 Research	This rule establishes standards and procedures for conducting research in Alcohol and Drug Abuse Programs, Comprehensive Substance Treatment and Rehabilitation Programs (CSTAR), Compulsive Gambling Treatment Programs, Substance Abuse Traffic Offender Programs (SATOP), Required Education Assessment and Community Treatment Programs (REACT), Community Psychiatric Rehabilitation Programs (CPRP), and Psychiatric Outpatient Programs.	10/30/2001	Y	N	N	N	N	Y	Y	None	N/A
9 CSR 10-7.060 Behavior Management	This rule establishes requirements for the use of restraint, seclusion and time out in Alcohol and Drug Abuse Treatment Programs, Comprehensive Substance Treatment and Rehabilitation Programs (CSTAR), Compulsive Gambling Treatment Programs, Substance Abuse Traffic Offender Programs (SATOP), Required Education Assessment and Community Treatment Programs (REACT), Community Psychiatric Rehabilitation Programs (CPRP), and Psychiatric Outpatient Programs.	11/30/2002	Y	No, the committee is amending the rule to incorporate best practices for seclusion and restraint in community-based settings.	N	Possibly, committee will determine if less restrictive language can be incorporated while still assuring safety in community based settings.	N	Y	Y	None	N/A
9 CSR 10-7.070 Medications	This rule describes training and procedures for the proper storage, use and administration of medications in Alcohol and Drug Abuse Treatment Programs, Comprehensive Substance Treatment and Rehabilitation Programs (CSTAR), Compulsive Gambling Treatment Programs, Substance Abuse Traffic Offender Programs (SATOP), Required Education Assessment and Community Treatment Programs (REACT), Community Psychiatric Rehabilitation Programs (CPRP), and Psychiatric Outpatient Programs.	11/30/2002	Y	No. However, the committee will amend the rule to incorporate best practices for medication storage in community settings.	N	Possibly, committee will determine if less restrictive language can be incorporated while still assuring safety in community based settings.	N	Y	Y	None	N/A

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9 CSR 10-7.080 Dietary Service	This rule establishes dietary and food service requirements in Alcohol and Drug Abuse Treatment Programs, Comprehensive Substance Treatment and Rehabilitation Programs (CSTAR), Compulsive Gambling Treatment Programs, Substance Abuse Traffic Offender Programs (SATOP), Required Education Assessment and Community Treatment Programs (REACT), Community Psychiatric Rehabilitation Programs (CPRP), and Psychiatric Outpatient Programs.	10/30/2001	Y	No. However, the review committee will amend the rule to incorporate best practices for dietary services in community settings.	N	Possibly, committee will determine if less restrictive language can be incorporated while still assuring quality in community based settings.	N	No, references to US Dept. of Health and Human Services Food Guide Pyramid need to be updated and revised to meet 536.031.	Y	None	N/A
9 CSR 10-7.090 Governing Authority and Program Administration	This rule describes requirements for and responsibilities of the governing body in Alcohol and Drug Abuse Programs, Comprehensive Substance Treatment and Rehabilitation Programs (CSTAR), Compulsive Gambling Treatment Programs, Substance Abuse Traffic Offender Programs (SATOP), Required Education Assessment and Community Treatment Programs (REACT), Community Psychiatric Rehabilitation Programs (CPRP), and Psychiatric Outpatient Programs.	9/30/2010	Y	No. However, language will be amended to reflect best practices in community-based settings.	N	Possibly, committee will determine if less restrictive language can be incorporated while still assuring quality in community based settings.	N	Y	Y	None	N/A
9 CSR 10-7.100 Fiscal Management	This rule describes fiscal policies and procedures for Alcohol and Drug Abuse Programs, Comprehensive Substance Treatment and Rehabilitation Programs (CSTAR), Compulsive Gambling Treatment Programs, Substance Abuse Traffic Offender Programs (SATOP), Required Education Assessment and Community Treatment Programs (REACT), Community Psychiatric Rehabilitation Programs (CPRP), and Psychiatric Outpatient Programs.	10/30/2001	Y	No, language will be amended to reflect current policies for retention of fiscal records.	N	N	N	Y	Y	None	N/A

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9 CSR 10-7.110 Personnel	This rule describes personnel policies and procedures for Alcohol and Drug Abuse Programs, Comprehensive Substance Treatment and Rehabilitation Programs (CSTAR), Compulsive Gambling Treatment Programs, Substance Abuse Traffic Offender Programs (SATOP), Required Education Assessment and Community Treatment Programs (REACT), Community Psychiatric Rehabilitation Programs (CPRP), and Psychiatric Outpatient Programs.	4/30/2003	Y	No, language will be amended to enhance staff qualifications and training requirements.	N	N	N	Y	Y	None	N/A
9 CSR 10-7.120 Physical Plant and Safety	This rule describes requirements for the physical facilities and safety in Alcohol and Drug Treatment Abuse Programs, Comprehensive Substance Treatment and Rehabilitation Programs (CSTAR), Compulsive Gambling Treatment Programs, Substance Abuse Traffic Offender Programs (SATOP), Required Education Assessment and Community Treatment Programs (REACT), Community Psychiatric Rehabilitation Programs (CPRP), and Psychiatric Outpatient Programs.	10/30/2001	Y	No, language will be amended to incorporate latest recommendations from state fire marshal.	N	N	N	No, reference to National Fire Protection Life Safety Code needs to be updated to meet 536.031.	Y	None	N/A
9 CSR 10-7.130 Procedures to Obtain Certification	This rule describes procedures to obtain certification as Alcohol and Drug Abuse Programs, Comprehensive Substance Treatment and Rehabilitation Programs (CSTAR), Compulsive Gambling Treatment Programs, Substance Abuse Traffic Offender Programs (SATOP), Required Education Assessment and Community Treatment Programs (REACT), Community Psychiatric Rehabilitation Programs (CPRP), and Psychiatric Outpatient Programs.	9/30/2003	Y	No, procedures will be amended to make the application process more streamlined for community programs.	N	Possibly, review committee will determine necessary changes to make the application process more user-friendly for community providers.	Yes, DMH may amend the process to allow for electronic submission of applications.	Y	Y	None	N/A
9 CSR 10-7.140 Definitions	This rule defines terms used in the certification of psychiatric and substance abuse programs.	10/30/2016	Y	N	N	N	N	Y	Y	None	N/A

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9 CSR 10-31.011 Standard Means Test	This rule prescribes a standard means test as required by section 630.210, RSMo, to determine amounts to be charged for services provided or procured by the Department of Mental Health.	5/30/2010	Y	No. However, the rule is outdated and needs amendments to clarify applicability.	N	N	N	Y	Y	1	Pages 1 - 2
9 CSR 10-31.012 State Income Tax Refund Intercept Hearing Procedures	This rule prescribes a hearing procedure for taxpayers who protest, in writing, the application of their state income tax refunds to debts owed to the Department of Mental Health.	9/30/1991	Y	N	N	N	N	Y	N/A	None	N/A
9 CSR 10-31.014 Waiver of Standard Means Test for Children in Need of Mental Health Services	This rule implements a revision to section 630.210, RSMo requiring the department to promulgate a rule waiving the Standard Means Test for a child in need of mental health services.	3/30/2005	Y	No, rule will be updated.	N	N	N	Y	Y	None	N/A
9 CSR 10-31.016 Determining State of Domicile	This rule prescribes department procedures for determining the domiciliary state of any patient resident or client receiving services from a facility, program or service operated or funded by the department as required by section 630.210, RSMo.	6/30/2017	Y	N	N	N	N	Y	Y	None	N/A
9 CSR 10-31.030 Intermediate Care Facility for the Mentally Retarded Federal Reimbursement Allowance	This rule establishes the formula to determine the Federal Reimbursement Allowance for each Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) operated primarily for the care and treatment of individuals with intellectual and developmental disabilities. This rule applies to both private ICF/IIDs and ICF/IID facilities operated by the Department of Mental Health.	6/30/2017	Y		N	N	N	Y	Y	None	N/A
9 CSR 10-31.040 Community Mental Health Center Clinic UPL	This rule establishes the formula to determine supplemental payments under Medicaid subject to the clinic upper payment limit to Community Mental Health Center Clinics (CMHC).	8/30/2012	Y	No, rule will be updated.	N	N	N	Y	Y	None	N/A

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9 CSR 25-2.005 Definitions	This rule defines terms used in this chapter.	12/30/2003	Y	No. However, division names and references need to be updated. Also, portions of the rule are no longer applicable and/or terminology is no longer accurate.	Yes - Some overlap with 1 CSR 40-1 (Office of Administration - Purchasing and Materials Management)	N	N	No - Some references are no longer applicable and/or should be updated.	Y	None	N/A
9 CSR 25-2.105 Purchasing Client Services	This rule prescribes the procurement system for purchasing certain departmental services (other than in the department's community placement program) for departmental clients. As set out in sections 34.100 and 630.405, RSMo, the commissioner of administration shall have the power to delegate his/her authority to purchase services for clients from providers to the department. The delegation of authority requires the department to comply with the basic intent of public procurement procedures to purchase the services.	12/30/2003	Y	No. However, portions of the rule are no longer applicable and/or terminology is no longer accurate	Yes - Some overlap with 1 CSR 40-1 (Office of Administration - Purchasing and Materials Management)	Y	N	No - Some references are no longer applicable and/or should be updated.	Y	None	N/A
9 CSR 25-2.305 Request for Proposal Solicitation Procedures	This rule prescribes department procedures for soliciting offerors in response to requests for a proposal.	12/30/2003	Y	No. However, portions of the rule are no longer applicable and/or terminology is no longer accurate	Yes - Some overlap with 1 CSR 40-1 (Office of Administration - Purchasing and Materials Management)	Y	N	No - Some references are no longer applicable and/or should be updated.	Y	None	N/A
9 CSR 25-2.405 RFP Evaluation and Award	This rule prescribes the request for a proposal evaluation and award procedures.	12/30/2003	Y	No. However, portions of the rule are no longer applicable and/or terminology is no longer accurate	Yes - Some overlap with 1 CSR 40-1 (Office of Administration - Purchasing and Materials Management)	Y	N	No - Some references are no longer applicable and/or should be updated.	Y	None	N/A

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9 CSR 25-2.505 Protest and Appeal Procedures	This rule prescribes procedures for offerors to protest the department's competitive Request for Proposal solicitation process and/or appeal a department decision regarding the award of contract(s), as a result of a competitive Request for Proposal process.	6/30/2002	Y	No. However, portions of the rule are no longer applicable and/or terminology is no longer accurate	Yes - Some overlap with 1 CSR 40-1 (Office of Administration - Purchasing and Materials Management)	Y	N	No - Some references are no longer applicable and/or should be updated.	Y	None	N/A
9 CSR 25-3.030 Access for Inspection of Public Records and Fees for Copying of Public Records	This rule prescribes requirements for individuals and organizations to gain access to public records of the department and fees for copying of those public records.	7/30/2005	Y	N	N	N	N	Y	Y	None	N/A
9 CSR 25-3.040 Fiscal Management	This rule sets guidelines for compensation to public administrators and applies to all department facilities designated as representative payee for client entitlements when the public administrator is guardian.	6/27/1988	Y	N	N	N	N	Y	Y	1	2
9 CSR 25-3.060 Payments to Counties with State Mental Health Facilities	This rule prescribes requirements for counties to receive payment from the department for personnel costs relating to mental health facilities.	2/25/1996	Y	N	N	N	N	Y	N/A	None	N/A
9 CSR 25-4.040 Recovery of Overpayments to Providers	This rule prescribes requirements for the collection of overpayments made by the department to providers and for the assessment of interest charges on overpayments.	8/30/2000	Y	No. However, Section 5(A) contains old terminology and DSS/DMH division names need to be updated.	N	N	N	Y	Y	None	N/A

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9 CSR 25-5.010 Guidelines for Planning Client Personal Spending Allowances	This rule prescribes guidelines for planning client personal spending allowances for department clients in residential facilities operated or funded by the department.	5/11/1985	Y	No. However, DMH is in the process of amending this rule.	N	N	N	Y	Y	None	N/A
9 CSR 30-2.010 Designation of Programs to Receive County Community Mental Health Funds	This rule prescribes the procedures to be used to designate programs eligible to receive county community mental health funds as set out in sections 205.975, 205.990, RSMo.	7/30/2014	Y	No, rule will be updated.	N	N	N	Y	Y	None	N/A
9 CSR 30-3.022 Transition to Enhanced Standards of Care	This rule describes procedures for programs currently certified under 9 CSR 30-3.010 through 9 CSR 30-3.610 to transition to enhanced standards of care.	10/30/2001	N	Yes, this rule will be rescinded.	N	Y	Y	Y	N	None	N/A
9 CSR 30-3.032 Certification of Alcohol and Drug Abuse Programs	This rule identifies the types of substance abuse programs eligible for certification and the applicable requirements.	10/30/2003	Y	No. However, language will be amended to incorporate current service delivery practices for substance use disorder treatment.	N	Possibly, review committee will determine if more narrowly defined language can still assure quality community-based services.	N	Y	Y	None	N/A

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9 CSR 30-3.100 Service Delivery Process and Documentation	This rule describes requirements in the delivery and documentation of services for those programs certified under 9 CSR 30-3.120 through 9 CSR 30-3.199.	10/30/2001	Y	No. However, language will be amended to incorporate best practices.	N	Possibly, review committee will determine if less restrictive language can be added and still assure quality community-based services.	Yes, use of electronic medical records and other technology will reduce paperwork related to documentation requirements.	No, reference to Diagnostic and Statistical Manual of Mental Disorders needs to be updated to meet 536.031.	Y	None	N/A
9 CSR 30-3.110 Service Definitions and Staff Qualifications	This rule defines and describes services provided at treatment and rehabilitation programs certified under 9 CSR 30-3.	5/30/2003	Y	No, terms will be amended to eliminate outdated and incorporate new terminology.	N	N	N	Y	Y	None	N/A
9 CSR 30-3.120 Detoxification	This rule describes the goals, eligibility and discharge criteria, levels of care, and performance indicators for detoxification programs.	11/30/2002	Y	No, rule will be amended to add best practices for detoxification services in community-based settings.	N	Possibly, review committee will determine if less restrictive language can be used while still assuring quality and safe community-based detox services.	N	Y	Y	None	N/A
9 CSR 30-3.130 Outpatient Treatment	This rule describes the levels of outpatient care that may be certified and the goals, eligibility criteria, and available services. Discharge criteria and performance indicators for outpatient programs are also identified.	3/30/2003	Y	No, levels of care and other criteria will be amended to reflect best practices in the field.	N	Possibly, less restrictive language may be incorporated to allow providers more flexibility in service delivery, while still assuring quality and safety for consumers.	N	Y	Y	None	N/A

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9 CSR 30-3.132 Opioid Treatment Program	This rule describes the specific functions, policies and practices required for a methadone treatment program.	7/30/2005	Y	No, language will be amended to incorporate best practices and updated terminology.	N	Possibly, less restrictive language will be incorporated to allow providers more flexibility in service delivery while still assuring quality and safety for consumers.	N	Y	Y	None	N/A
9 CSR 30-3.134 Compulsive Gambling Treatment	This rule describes the specific service delivery requirements for compulsive gambling treatment.	10/30/2001	Y	No, language will be amended to incorporate best practices and updated terminology.	N	Possibly, committee will determine if more narrowly defined language can be added to allow flexibility for treatment providers.	N	No, reference to Diagnostic and Statistical Manual of Mental Disorders needs to be updated to meet 536.031.	Y	None	N/A
9 CSR 30-3.140 Residential Treatment	This rule describes the goals, eligibility and discharge criteria, available services, and performance indicators for residential treatment.	11/30/2002	Y	No, language will be amended to incorporate best practices and updated terminology.	N	Review committee will determine if less restrictive language can be added to allow flexibility for treatment providers.	N	Y	Y	None	NA
9 CSR 30-3.150 Comprehensive Substance Treatment and Rehabilitation	This rule establishes special requirements for service delivery as Comprehensive Substance Treatment and Rehabilitation (CSTAR).	10/30/2001	Y	No, language will be amended to incorporate best practices and updated terminology.	N	Review committee will determine if less restrictive language can be added to allow flexibility for treatment providers while still meeting Medicaid requirements.	Use of electronic medical records and other technology such as telehealth reduces some of the paperwork for providers.	Y	Y	None	NA

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9 CSR 30-3.160 Institutional Corrections Treatment Programs	This rule supplements other rules under this chapter by setting forth rules which are specific to institutional corrections treatment programs.	10/30/2001	Y	No, language will be amended to meet the current needs of individuals served in correctional settings as well as staff overseeing those services.	N	N	N	No, reference to Diagnostic and Statistical Manual of Mental Disorders needs to be updated to meet 536.031.	Y	None	N/A
9 CSR 30-3.190 Specialized Program for Women and Children	This rule establishes requirements relative to specialized substance abuse programs for women and children.	10/30/2001	Y	No, language will be amended to include best practices for serving women and children with substance use disorders.	N	Possibly, review committee will determine if less restrictive language can be added while still assuring quality services in a safe community setting.	Use of electronic medical records and other technology reduces some of the paperwork for providers.	Y	Y	None	N/A
9 CSR 30-3.192 Specialized Programs for Adolescents	This rule establishes requirements relative to specialized substance abuse programs for adolescents.	3/30/2003	Y	No, language will be amended to include best practices for serving adolescents with substance use disorders.	N	Possibly, committee will determine if less restrictive language can be incorporated to allow greater flexibility for treatment providers in terms of service delivery practices.	N	Y	Y	None	N/A

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9 CSR 30-3.201 Substance Abuse Traffic Offender Programs	This rule identifies the Department of Mental Health as being responsible for the certification of Substance Abuse Traffic Offender Programs as mandated by state statute.	1/30/2005	Y	No, language will be amended to coincide with best practices for serving individuals charged with alcohol or drug-related driving offenses.	N	Possibly, review committee will determine if a more narrowly tailored rule can still ensure DUI offenders receive appropriate services to prevent repeated offenses.	Possibly, committee will review to determine if any forms can be eliminated or processed electronically.	Y	Y	None	N/A
9 CSR 30-3.202 SATOP Administration and Service Documentation	This rule establishes administrative procedures and practices in the operation of Substance Abuse Traffic Offender Programs.	1/30/2005	Y	No, language will be amended to include current terminology and practices.	N	Review committee will determine if rule can be more narrowly tailored and still accomplish SATOP mission.	Review committee will determine if any current practices can be reduced or eliminated.	No, reference to SATOP Manual needs to be updated to comply with 536.031.	Y	None	N/A
9 CSR 30-3.204 SATOP Personnel	This rule describes the personnel policies, staff qualifications and training requirements in Substance Abuse Traffic Offender Programs and establishes specific policies and procedures for the revocation or suspension of certified personnel.	1/30/2005	Y	No, language will be amended to reflect that staff are credentialed by an outside entity versus the division.	N	N	N	Y	Y	None	N/A
9 CSR 30-3.206 SATOP Program Structure	This rule establishes basic requirements and structure for Substance Abuse Traffic Offender Programs including the assessment screening and referral process.	1/30/2005	Y	No, language will be amended to reflect current practices.	N	Review committee will determine if the rule can be more narrowly tailored without jeopardizing program quality.	N	No, reference to program curriculum guides needs to be updated to comply with 536.031.	Y	None	N/A
9 CSR 30-3.208 SATOP Supplemental Fee	This rule establishes a supplemental fee which shall be collected by all certified Substance Abuse Traffic Offender Programs as required by state statute.	1/30/2005	Y	N	N	N	N	Y	Y	None	N/A

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9 CSR 30-3.230 Required Educational Assessment and Community Treatment Program	This rule identifies the Department of Mental Health as being responsible for the certification of Required Educational Assessment and Community Treatment programs as mandated by state statute.	10/30/2001	N	Yes, the department is proposing to rescind this rule through a statutory change to eliminate the program. The program is not being utilized.	N	N	N	Y	N	None	N/A
9 CSR 30-3.300 Prevention Programs	This rule identifies the expected outcomes, strategies and operational requirements for prevention programs.	4/30/2002	Y	No, prevention staff are updating the rule to reflect best practices in the field.	N	N	N	Y	Y	None	N/A
9 CSR 30-3.310 Recovery Support Programs	This rule describes the certification and service delivery requirements for recovery support programs.	10/30/2016	Y	N	N	N	N	Y	Y	None. The rule was not in effect when the periodic rule review comment period was open.	N/A
9 CSR 30-4.010 Definitions	This rule defines the special terms used in 9 CSR 30-4.020–9 CSR 30-4.190 regarding the certification standards for mental health agencies.	3/30/2003	y	No, rule is being updated to eliminate outdated terms and add current terms.	N	N	N	Y	Y	None	N/A
9 CSR 30-4.020 Procedures to Obtain Certification	This rule describes the procedure to obtain certification from the Department of Mental Health for mental health agencies as authorized by section 630.655, RSMo.	10/30/2001	Y	N	N	N	N	Y	Y	None	N/A

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9 CSR 30-4.030 Certification Standards Definitions	This rule defines terms and explains usage rules for those terms used in certification procedures and standards developed under section 630.655, RSMo, for community psychiatric rehabilitation programs and certain services serving persons with serious mental illnesses and disorders.	6/30/2012	Y	Yes, will be rescinded. Current definitions will be incorporated with another DMH rule.	Yes, overlaps with DMH Core Rules for Psychiatric and Substance Use Disorder Treatment Programs	N	N	Y	Y	None	N/A
9 CSR 30-4.031 Procedures to Obtain Certification for Centers	This rule describes procedures to obtain certification from the Department of Mental Health for community psychiatric rehabilitation programs.	7/12/2002	Y	No, the rule will be updated to reflect current practice.	N	N	N	Y	Y	None	N/A
9 CSR 30-4.032 Administration	This rule sets out responsibilities and authority of the governing body and director of a community psychiatric rehabilitation program.	7/12/2002	Y	N	N	N	N	Y	Y	None	N/A
9 CSR 30-4.033 Fiscal Management of Community Psychiatric Rehabilitation Programs	This rule prescribes fiscal policies and procedures for community psychiatric rehabilitation programs.	10/30/2001	N	Yes, rule will be rescinded as it is covered in another DMH rule.	Yes, overlaps with DMH Core Rules for Psychiatric and Substance Use Disorder Treatment Programs	Yes, rule will be rescinded.	Yes, rule will be rescinded.	Y	No, rule will be rescinded.	None	N/A
9 CSR 30-4.034 Personnel and Staff Development	This rule prescribes personnel policies and procedures for community psychiatric rehabilitation programs.	6/30/2012	Y	No, will be updated to reflect current practices.	N	N	N	Y	Y	None	N/A

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9 CSR 30-4.035 Client Records of a Community Psychiatric Rehabilitation Program	This rule prescribes the content requirements of a clinical record maintained by a community psychiatric rehabilitation program.	6/30/2012	Y	No, the rule will be updated to reflect current practice.	N	Possibly, the review committee will determine if the rule can be less restrictive while still ensuring quality care and successful outcomes for individuals served.	Possibly, committee will review to determine if there are areas that can be modified to reduce time and paperwork for service providers.	Y	Y	None	N/A
9 CSR 30-4.038 Client Rights for Community Psychiatric Rehabilitation Programs	This rule describes client rights and confidentiality requirements for community psychiatric rehabilitation programs.	10/30/2001	Y	No, review committee will determine if rule can be rescinded and incorporate necessary language into DMH Core Rule.	Overlaps with DMH Core Rule for Psychiatric and Substance Use Disorder Treatment programs. Will determine if necessary language can be added to Core.	N	N	Y	Y	None	N/A
9 CSR 30-4.039 Service Provision	This rule sets out requirements for the provision of community psychiatric rehabilitation services.	6/30/2012	Y	No, rule is being updated.	N	N	N	Y	Y	None	N/A
9 CSR 30-4.040 Quality Assurance	This rule sets out requirements for quality assurance activities and functions for community psychiatric rehabilitation programs.	10/30/2001		Yes, rule will be rescinded as it is covered in another DMH rule.	Yes, overlaps with DMH Core Rules for Psychiatric and Substance Use Disorder Treatment Programs	Y	Yes, rule will be incorporated into another DMH rule.	Y	Y	None	N/A

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9 CSR 30-4.041 Medication Procedures at Community Psychiatric Rehabilitation Programs	This rule sets out procedures to safely record, store and administer medications at a community psychiatric rehabilitation program facility site or in off-site situations.	3/30/2003	Y	No, review committee will determine if rule can be rescinded and incorporated into another DMH Core Rule.	Overlaps with DMH Core Rule for Psychiatric and Substance Use Disorder Treatment programs. Will determine if necessary language can be added to Core.	Possibly, to be determined by review committee.	Possibly, to be determined by review committee.	Y	Y	None	N/A
9 CSR 30-4.042 Admission Criteria	This rule establishes criteria and procedures for admission of eligible individuals to a community psychiatric rehabilitation program.	6/30/2012	Y	No, rule will be updated.	N	N	Possibly, to be determined by review committee.	No, rule will be corrected.	Y	None	N/A
9 CSR 30-4.043 Treatment Provided by Community Psychiatric Rehabilitation Programs	This rule sets policies and procedure requirements relating to psychiatric treatment services provided by community psychiatric rehabilitation programs.	6/30/2012	Y	No, rule will be updated.	N	N	N	Y	Y	None	N/A
9 CSR 30-4.0431 Integrated Dual Disorders Treatment Programs	This rule sets forth standards and regulations for the provision of integrated dual disorders treatment services in community psychiatric rehabilitation programs for adults.	4/30/2009	Y	No, rule will be updated to add state of the art terminology for this evidence based practice.	N	N	N	Y	Y	None	N/A
9 CSR 30-4.0432 Assertive Community Treatment Programs	This rule sets forth standards and regulations for the provision of assertive community treatment services in community psychiatric rehabilitation programs for adults.	3/30/2010	Y	No, rule is being updated to reflect current practices and terminology being used.	N	N	N	No, rule will be corrected.	Y	None	N/A
9 CSR 30-4.045 Intensive Community Psychiatric Rehabilitation	This rule sets forth standards and regulations for the provision of intensive community psychiatric rehabilitation service.	2/24/2011	Y	No, rule will be updated.	N	N	N	Y	Y	None	N/A

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9 CSR 30-4.046 Psychosocial Rehabilitation	This rule provides standards for psychosocial rehabilitation programs operated as part of a community psychiatric rehabilitation program.	6/30/2012	Y	No, rule is being updated to add educational requirements for staff and remove outdated terminology.	N	N	N	Y	Y	None	N/A
9 CSR 30-4.047 Community Support	This rule sets out requirements for community support services provided by a community psychiatric rehabilitation program.	7/30/1995	Y	No, rule will be updated.	N	N	N	Y	Y	None	N/A
9 CSR 30-4.160 Client Records	This rule prescribes the contents to be found in client's records.	10/30/2001	Y	No, rule will be reviewed to determine if it can be rescinded and incorporated into a DMH Core Rule.	Overlaps with DMH Core Rule for Psychiatric and Substance Use Disorder Treatment programs. Will determine if necessary language can be added to Core.	N	N	Y	Y	None	N/A
9 CSR 30-4.190 Treatment	This rule prescribes policies and procedures for outpatient mental health program.	10/30/2001	Y	No, minor revisions will be made.	N	N	N	Y	Y	None	N/A
9 CSR 30-4.195 Access Crisis Intervention Programs	This rule sets forth standards and regulations for Access Crisis Intervention Programs.	7/30/2004	Y	No, rule will be updated.	N	N	N	Y	Y	None	N/A
9 CSR 40-1.015 Definitions	This rule defines terms and explains usage rules for terms used in licensure procedures and rules developed under sections 630.705–630.760, RSMo for all licensed community residential facilities and day programs.	3/30/1996	Y	No, definitions are being updated.	N	N	N	Y	Y	None	N/A

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9 CSR 40-1.055 Licensing Procedures	This rule establishes procedures for applying for and obtaining a license.	3/30/1996	Y	No, rule is being updated to streamline the application process through automation.	N	N	Possibly, review committee will determine if procedures can be changed to be less burdensome.	Y	Y	None	N/A
9 CSR 40-1.105 Implementation of Licensing Authority for Certain Day Programs and Community Residential Facilities	This rule clarifies what types of facilities are subject to licensure, and the relationship of licensure with community residential facilities and day programs that are licensed or certified by state agencies.	3/30/1996	Y	No, rule is being updated to remove outdated language and facility types and incorporate current practices.	N	N	Possibly, review committee will determine if procedures can be changed to be less burdensome.	NA	Y	None	N/A
9 CSR 40-1.118 Licensing Advisory Board	This rule establishes a licensure advisory board to advise the department regarding licensure policies and administrative rules.	3/30/1996	N	Yes, review committee will determine if rule can be rescinded.	N	Possibly.	May rescind.	Y	Y	None	N/A
9 CSR 40-2.015 Resident and Client Rights	This rule prescribes limited and unlimited rights of consumers of all community residential facilities or day programs as required by section 630.705, RSMo.	3/30/1996	Y	No, rule is being updated to remove outdated language and incorporate current terminology.	N	N	N	Y	Y	None	N/A
9 CSR 40-2.075 Administrative Policies and Procedures	This rule prescribes requirements for policies and procedures governing the operation of all community residential facilities and day programs as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	N	Possibly, review committee will determine if rule can be changed to be less burdensome.	Y	Y	None	N/A

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9 CSR 40-3.115 Admission Criteria	This rule prescribes criteria for admission in all community residential facilities as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Yes, rule will be revised to combine all like program types and their corresponding requirements into the same sections. This will improve readability and simplify the language.	Possibly, review committee will determine if rule can be changed to be less burdensome.	Y	Y	None	N/A
9 CSR 40-3.135 Care, Treatment, and Habilitation and Rehabilitation	This rule prescribes requirements for services and supports in all community residential facilities as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Yes, rule will be revised to combine all like program types and their corresponding requirements into the same sections. This will improve readability and simplify the language.	Possibly, review committee will determine if the rule can be revised to reduce paperwork or other processes for service providers while ensuring safety of individuals.	Y	Y	None	N/A
9 CSR 40-4.095 Recordkeeping	This rule prescribes requirements for a uniform system of recordkeeping in all community residential facilities and Psychiatric Group Homes II as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Possibly, review committee is working to combine as many rules as possible and eliminate outdated processes.	Possibly, review committee will determine.	Y	Y	None	N/A

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9 CSR 40-4.115 Admission Criteria	This rule prescribes criteria for admission in all community residential facilities except Psychiatric Group Homes II as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated. Like program types will be combined into one rule.	N	Possibly, review committee is working to combine as many rules as possible and eliminate outdated processes.	Possibly, review committee will determine.	Y	Y	None	N/A
9 CSR 40-4.116 Admission Criteria for Psychiatric Group Homes II	This rule prescribes criteria for admission to Psychiatric Group Homes II as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated. Like program types will be combined into one rule.	N	Possibly, review committee is working to combine as many rules as possible and eliminate outdated processes.	Possibly, review committee will determine.	Y	Y	None	N/A
9 CSR 40-4.135 Care, Treatment, Habilitation and Rehabilitation	This rule prescribes requirements for services and supports in all community residential facilities and Psychiatric Group Homes II as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated. Like program types will be combined into one rule.	N	Possibly, review committee is working to combine as many rules as possible and eliminate outdated processes.	Possibly, review committee will determine.	Y	Y	None	N/A
9 CSR 40-4.145 Maintenance, Housekeeping and Laundry	This rule prescribes maintenance, housekeeping and laundry requirements for all community residential facilities and Psychiatric Group Homes II as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated. Like program types will be combined into one rule.	N	Possibly, review committee is working to combine as many rules as possible and eliminate outdated processes.	Possibly, review committee will determine.	Y	Y	None	N/A

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9 CSR 40-4.155 Fire Safety	This rule prescribes fire safety requirements for all community residential facilities and Psychiatric Group Homes II, as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated to incorporate current fire safety standards.	N	Possibly, review committee is working to combine as many rules as possible and eliminate outdated processes.	Possibly, review committee will determine.	No, reference to National Fire Protection Association codes will be corrected.	Y	None	N/A
9 CSR 40-5.015 Physical Plant	This rule prescribes physical plant requirements in certain community residential facilities as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Possibly, review committee is working to combine as many rules as possible and eliminate outdated processes.	Possibly, review committee will determine.	No, reference to National Electric Code will be corrected.	Y	None	N/A
9 CSR 40-5.035 General Medical and Health Care	This rule prescribes general medical and health care requirements for certain community residential facilities as required in section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Possibly, review committee is working to combine as many rules as possible and eliminate outdated or duplicative processes.	Possibly, review committee will determine.	Y	Y	None	N/A
9 CSR 40-5.055 Food Services	This rule prescribes food service requirements in certain community residential facilities as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Possibly, review committee is working to combine as many rules as possible and eliminate outdated or duplicative processes.	Possibly, review committee will determine.	Y	Y	None	N/A

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9 CSR 40-5.075 Adequate Staff	This rule prescribes requirements for personnel employed in certain community residential facilities as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Possibly, review committee is working to combine as many rules as possible and eliminate outdated or duplicative processes.	Possibly, review committee will determine.	Y	Y	None	N/A
9 CSR 40-6.015 Physical Plan	This rule prescribes physical plant requirements for community residential facilities serving fewer than four residents as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Possibly, review committee is working to combine as many rules as possible and eliminate outdated or duplicative processes.	Possibly, review committee will determine.	Y	Y	None	N/A
9 CSR 40-6.035 General Medical and Health Care	This rule prescribes general medical and health care requirements for community residential facilities with fewer than four residents as required by section 630.710, RSMo.	3/30/1996	Y	No, rule will be updated.	N	Possibly, review committee is working to combine as many rules as possible and eliminate outdated or duplicative processes.	Possibly, review committee will determine.	Y	Y	None	N/A
9 CSR 40-6.055 Food Services	This rule prescribes requirements for food services in community residential facilities having fewer than four residents as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Possibly, review committee is working to combine as many rules as possible and eliminate outdated or duplicative processes.	Possibly, review committee will determine.	No, reference to Ntl. Plumbing Code will be corrected.	Y	None	N/A

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9 CSR 40-6.075 Adequate Staff	This rule prescribes requirements for personnel of a community residential facility serving fewer than four residents as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Possibly, review committee is working to combine as many rules as possible for similar or like programs and to eliminate outdated or duplicative processes.	Possibly, review committee will determine.	Y	Y	None	N/A
9 CSR 40-7.015 Physical Plant	This rule prescribes physical plant requirements for semi-independent living arrangements as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Possibly, review committee is working to combine as many rules as possible for similar or like programs and to eliminate outdated or duplicative processes.	Possibly, review committee will determine.	Y	Y	None	N/A
9 CSR 40-7.035 General Medical and Health Care	This rule prescribes general medical and health care requirements for semi-independent living arrangements as required in section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Possibly, review committee is working to combine as many rules as possible for similar or like programs and to eliminate outdated or duplicative processes.	Possibly, review committee will determine.	Y	Y	None	N/A

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9 CSR 40-7.055 Food Services	This rule prescribes requirements for food services in semi-independent living arrangements as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Possibly, review committee is working to combine as many rules as possible for similar or like programs and to eliminate outdated or duplicative processes.	Possibly, review committee will determine.	No, reference to National Plumbing Code will be corrected.	Y	None	NA
9 CSR 40-7.075 Adequate Staff	This rule prescribes requirements for personnel employed in a semi-independent living arrangement as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Possibly, review committee is working to combine as many rules as possible for similar or like programs and to eliminate outdated or duplicative processes.	Possibly, review committee will determine.	Y	Y	None	N/A
9 CSR 40-8.075 Adequate Staff	This rule prescribes requirements for personnel employed in a psychiatric group home as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Possibly, review committee is working to combine as many rules as possible for similar or like programs and to eliminate outdated or duplicative processes.	Possibly, review committee will determine.	Y	Y	None	N/A

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9 CSR 40-9.015 Physical Plant Requirements	This rule prescribes physical plant requirements in day programs as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Possibly, review committee is working to combine as many rules as possible for similar or like programs and to eliminate outdated or duplicative processes.	Possibly, review committee will determine.	No, reference to Standards of the American National Standards Institute will be replaced with current standard requirements. Reference to National Electrical Code will be corrected.	Y	None	N/A
9 CSR 40-9.035 General Medical and Health Care	This rule prescribes general medical and health care requirements for day programs as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Possibly, review committee is working to combine as many rules as possible for similar or like programs and to eliminate outdated or duplicative processes.	Possibly, review committee will determine.	Y	Y	None	N/A
9 CSR 40-9.055 Food Services	This rule prescribes food service in day programs as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Possibly, review committee is working to combine as many rules as possible for similar or like programs and to eliminate outdated or duplicative processes.	Possibly, review committee will determine.	Reference to Food and Nutrition Board document will be corrected or deleted if no longer applicable.	Y	None	N/A

Department of Mental Health Periodic Rule Review

Rule Title	Rule Purpose	Date of adoption or amendment	Is the rule necessary?	Is the rule obsolete?	Does rule overlap, duplicate or conflict with other rules?	Can a less restrictive or more narrowly tailored rule accomplish the same purpose or adequately protect the public?	Can rule be modified to reduce regulatory burden on individuals, businesses, or political subdivisions?	Does the rule properly incorporate material by reference?	For rules affecting small business: does the public purpose or interest for adopting justify continued existence of rule?	Number of comments received on rule	Page number of Appendix for Response
9 CSR 40-9.075 Adequate Staff	This rule prescribes requirements for personnel employed in a day program as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Possibly, review committee is working to combine as many rules as possible for similar or like programs and to eliminate outdated or duplicative processes.	Possibly, review committee will determine.	Y	Y	None	N/A
9 CSR 40-9.095 Recordkeeping	This rule prescribes requirements for a uniform system of recordkeeping in day programs as required by section 630.710, RSMo.	3/30/1996	Y	No, rule will be updated.	N	Possibly, review committee is working to combine as many rules as possible for similar or like programs and to eliminate outdated or duplicative processes.	Possibly, review committee will determine.	Y	Y	None	N/A
9 CSR 40-9.115 Admission Criteria	This rule prescribes criteria for the admission to day programs as required by section 630.710, RSMo.	3/30/1996	Y	No, rule will be updated.	N	Possibly, review committee is working to combine as many rules as possible for similar or like programs and to eliminate outdated or duplicative processes.	Possibly, review committee will determine.	Y	Y	None	N/A

Department of Mental Health Periodic Rule Review

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9 CSR 40-9.135 Care, Treatment, Habilitation and Rehabilitation	This rule prescribes requirements for client care, treatment and habilitation in day programs as required by section 630.710, RSMo.	3/30/1996	Y	No, rule will be updated.	N	Possibly, review committee is working to combine as many rules as possible for similar or like programs and to eliminate outdated or duplicative processes.	Possibly, review committee will determine.	Y	Y	None	N/A
9 CSR 40-9.145 Maintenance, Housekeeping and Laundry	This rule prescribes maintenance, housekeeping and laundry requirements in day programs as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Possibly, review committee is working to combine as many rules as possible for similar or like programs and to eliminate outdated or duplicative processes.	Possibly, review committee will determine.	Y	Y	None	N/A
9 CSR 40-9.155 Fire Safety	This rule prescribes fire safety requirements for all day programs as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Possibly, review committee is working to combine as many rules as possible for similar or like programs and to eliminate outdated or duplicative processes.	Possibly, review committee will determine.	No, reference to National Life Safety Code will be corrected.	Y	None	N/A

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9 CSR 40-10.015 Physical Plan Requirements	This rule prescribes physical plant requirements in day programs serving people who are mentally ill or mentally disordered as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Possibly, review committee is working to combine as many rules as possible for similar or like programs and to eliminate outdated or duplicative processes.	Possibly, review committee will determine.	Y	Y	None	N/A
9 CSR 40-10.035 General Medical and Health Care	This rule prescribes general medical and health care requirements for day programs serving people who are mentally ill or mentally disordered as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Possibly, review committee is working to combine as many rules as possible for similar or like programs and to eliminate outdated or duplicative processes.	Possibly, review committee will determine.	Y	Y	None	N/A
9 CSR 40-10.055 Food Services	This rule prescribes food service in day programs serving people who are mentally ill or mentally disordered as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Possibly, review committee is working to combine as many rules as possible for similar or like programs and to eliminate outdated or duplicative processes.	Possibly, review committee will determine.	Y	Y	None	N/A

Department of Mental Health Periodic Rule Review

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9 CSR 40-10.075 Adequate Staff	This rule prescribes requirements for personnel employed in a day program serving people who are mentally ill or mentally disordered as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Possibly, review committee is working to combine as many rules as possible for similar or like programs and to eliminate outdated or duplicative processes.	Possibly, review committee will determine.	Y	Y	None	N/A
9 CSR 40-10.095 Recordkeeping	This rule prescribes requirements for a uniform system of recordkeeping in day programs serving people who are mentally ill or mentally disordered as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Possibly, review committee is working to combine as many rules as possible for similar or like programs and to eliminate outdated or duplicative processes.	Possibly, review committee will determine.	Y	Y	None	N/A
9 CSR 40-10.115 Admission Criteria	This rule prescribes criteria for the admission to day programs serving people who are mentally ill or mentally disordered as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Possibly, review committee is working to combine as many rules as possible for similar or like programs and to eliminate outdated or duplicative processes.	Possibly, review committee will determine.	Y	Y	None	N/A

Department of Mental Health Periodic Rule Review

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9 CSR 40-10.135 Care, Treatment and Rehabilitation	This rule prescribes requirements for client care, treatment and rehabilitation in day programs serving people who are mentally ill and mentally disordered as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Possibly, review committee is working to combine as many rules as possible for similar or like programs and to eliminate outdated or duplicative processes.	Possibly, review committee will determine.	Y	Y	None	NA
9 CSR 40-10.145 Maintenance, Housekeeping and Laundry	This rule prescribes maintenance, housekeeping and laundry requirements in day programs serving people who are mentally ill or mentally disordered as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Possibly, review committee is working to combine as many rules as possible for similar or like programs and to eliminate outdated or duplicative processes.	Possibly, review committee will determine.	Y	Y	None	N/A
9 CSR 40-10.155 Fire Safety	This rule prescribes fire safety requirements for all day programs serving people who are mentally ill or mentally disordered as required by section 630.710, RSMo.	3/30/1996	Y	No, rule is being updated.	N	Possibly, review committee is working to combine as many rules as possible for similar or like programs and to eliminate outdated or duplicative processes.	Possibly, review committee will determine.	Reference to National Fire Safety Codes will be corrected and updated.	Y	None	N/A

Department of Mental Health Periodic Rule Review

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9 CSR 45-2.010 Eligibility for Services from the Division of Developmental Disabilities	This rule establishes procedures for how the Division of Developmental Disabilities determines eligibility for its services.	9/30/2012	Y	No. However, the Division of DD is in the process of amending this rule to accurately reflect current practice and will obtain input from stakeholders on proposed updates.	N	N	N	Y	Y	None	N/A
9 CSR 45-2.015 Prioritizing Access to Funded Services	This rule establishes how individuals otherwise eligible for services will be selected for funded services and programs administered by the Department of Mental Health, Division of Developmental Disabilities, when services cannot be provided to all eligible individuals with developmental disabilities in the state of Missouri through the funding that is appropriated.	9/30/2012	Y	No. However, the Division of DD is in the process of amending this rule, and will obtain input from stakeholders on the proposed updates.	N	N	N	Y	Y	1	2
9 CSR 45-2.017 Utilization Review Process	This rule formally establishes a statewide utilization review process to: ensure individuals eligible for division services with similar needs are treated consistently and fairly throughout the state; ensure each individual's annual plan accurately reflects the individual's needs; ensure levels of service are defined and documented within the outcomes of each individual's plan; prioritize need for services; and ensure accountability of public funds.	9/30/2012	N	No. However, the Division of DD is in the process of amending this rule, and will obtain input from stakeholders on the proposed updates.	N	N	N	Y	Y	3	2 & 3
9 CSR 45-2.020 Appeals Procedures for Service Eligibility Through the Division of Developmental Disabilities	This rule prescribes procedures for appealing decisions on service eligibility.	9/30/2012	Y	N	N	N	N	Y	Y	None	N/A

Department of Mental Health Periodic Rule Review

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9 CSR 45-3.010 Individualized Habilitation Plan Procedures	This rule prescribes procedures for development and implementation of individualized habilitation plans for all individuals receiving services from the Division of Mental Retardation and Developmental Disabilities.	12/30/1995	Y	No. However, the rule is in need of updates. The division requested stakeholder review and comment on a draft amendment in summer, 2016. A revised draft is under development, and additional stakeholder review will be obtained before publishing a proposed amendment.	N	N	N	Y	Y	None	N/A
9 CSR 45-3.030 Individual Rights	This rule defines the rights of persons eligible for services from the Division of Developmental Disabilities (Division of DD).	2/28/2017	Y	N	N	N	N	Y	Y	None	N/A

Department of Mental Health Periodic Rule Review

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9 CSR 45-3.040 Rights of Designated Representatives, Parents, and Guardians	This rule prescribes policies for designation of representatives and recognition of certain rights of designated representatives, parents, and guardians of individuals receiving services from the Division of Developmental Disabilities (Division of DD).	2/28/2017	Y	N	N	N	N	Y	Y	None	N/A
9 CSR 45-3.060 Services for Individuals with Autism Spectrum Disorder	This rule establishes programs and services for persons with autism and their families.	2/28/2017	Y	N	N	N	N	Y	Y	None	N/A
9 CSR 45-3.070 Certification of Medication Aides Serving Persons with Developmental Disabilities	Individuals who administer medications or supervise self-administration of medications in any residential setting or day program funded, licensed or certified by the Department of Mental Health to provide services to persons who are mentally retarded or developmentally disabled, are required to be either a physician, a licensed nurse, a certified medication technician, a certified medication employee, a level I medication aide or Department of Mental Health medication aide.	8/30/2001	Y	No, however, a committee has been formed to update the rule to reflect current best practices.	N	N	N	Y	Y	None	N/A

Department of Mental Health Periodic Rule Review

Rule Title	Rule Purpose	Date of adoption or amendment	Is the rule necessary?	Is the rule obsolete?	Does rule overlap, duplicate or conflict with other rules?	Can a less restrictive or more narrowly tailored rule accomplish the same purpose or adequately protect the public?	Can rule be modified to reduce regulatory burden on individuals, businesses, or political subdivisions?	Does the rule properly incorporate material by reference?	For rules affecting small business: does the public purpose or interest for adopting justify continued existence of rule?	Number of comments received on rule	Page number of Appendix for Response
9 CSR 45-4.010 Residential Rate Setting	This rule prescribes procedures for establishing per-diem base rates for certain waiver and nonwaiver residential providers which accept persons with mental retardation under the department's community placement program.	12/30/1995	Y	No, however the rule needs to be revised to accurately describe the current residential rate setting methodology approved by the Centers for Medicare and Medicaid Services in the HCBS Comprehensive Waiver.	N	N	N	Y	Y	2	2 & 3
9 CSR 45-4.020 Development of Intermediate Care Facilities for Individuals with Intellectual Disabilities	This rule prescribes procedures on development of intermediate care facilities for persons with mental retardation.	11/30/2016	Y	No. However, the purpose statement needs to be updated to remove reference to "mental retardation."	N	N	N	Y	Y	None	N/A
9 CSR 45-4.030 Family Supports Stipends	This rule defines terms, establishes eligibility criteria and sets out procedures for providing cash stipends to families, enabling the families' children with developmental disabilities to continue to live in their family homes and remain integrated within their communities.	Rule was rescinded effective 10/30/2016.	N	Yes, rule was rescinded in 2016.	N/A	N/A	N/A	Y	N/A	None	N/A
9 CSR 45-4.040 Family Support Loans	This rule defines terms, establishes eligibility criteria and sets out procedures for providing low-interest loans to families, enabling the families' members with developmental disabilities to continue to live in their family homes and remain integrated within their communities.	Rule was rescinded effective 10/30/2016.	N	Yes, rule was rescinded in 2016.	N/A	N/A	N/A	Y	N/A	None	N/A

Department of Mental Health Periodic Rule Review

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9 CSR 45-5.010 Certification of Medicaid Agencies Serving Persons with Developmental Disabilities	This rule defines terms, establishes principles and sets out the process by which Medicaid agencies providing residential habilitation, day habilitation, supported employment or individualized supported living services attain certification.	12/30/1995	Y	No. However, the rule is in need of updates. A committee has been formed to draft an amendment and the public will be invited to review and comment on the draft before filing a proposed amendment.	N	N	N	Y	Y	1	3
9 CSR 45-5.060 Procedures to Obtain Certification	This rule describes procedures to obtain certification as a provider of residential habilitation, individualized supported living (ISL), supported employment, and day habilitation (on and off site), through the community-based Medicaid Waiver.	10/30/2003	Y	No. However, the rule is in need of updates. A committee has been formed to draft an amendment and the public will be invited to review and comment on the draft before filing a proposed amendment.	N	N	N	N	Y	None	N/A
9 CSR 45-5.105 Definitions for Fire Safety Rules	This rule establishes definitions for the fire safety rules promulgated under this chapter.	4/30/2004	Y	No. However, the rules needs to be updated with current terminology.	N	N	N	N	Y	None	N/A

Department of Mental Health Periodic Rule Review

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9 CSR 45-5.110 Fire Safety for On-Site Day Habilitation	This rule establishes fire safety requirements for on-site day habilitation funded through the Medicaid home and community-based waiver. The department delegates its authority for fire safety inspections under this rule to the Department of Public Safety, Division of Fire Safety.	4/30/2004	Y	No, however the rule needs to be updated with the office of the State Fire Marshall's recommendations for current best practice in fire safety. Discussions are underway with Office of State Fire Marshall.	N	N	N	N	Y	1	2
9 CSR 45-5.130 Fire Safety for Residential Habilitation for 4-9 People	This rule establishes fire safety requirements for residential habilitation homes serving four to nine (4-9) people funded through the Medicaid home and community-based waiver. The department delegates its authority for fire safety inspections under this rule to the Department of Public Safety, Division of Fire Safety.	4/30/2004	Y	No, however the rule needs to be updated with the office of the State Fire Marshall's recommendations for current best practice in fire safety. Discussions are underway with Office of State Fire Marshall.	N	N	N	N	Y	None	N/A

Department of Mental Health Periodic Rule Review

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9 CSR 45-5.140 Fire Safety for Residential Habilitation for 10-16 People	This rule establishes fire safety requirements for residential habilitation homes serving ten to sixteen (10-16) people funded through the Medicaid home and community-based waiver. The department delegates its authority for fire safety inspections under this rule to the Department of Public Safety, Division of Fire Safety.	4/30/2004	Y	No, however the rule needs to be updated with the office of the State Fire Marshall's recommendations for current best practice in fire safety. Discussions are underway with Office of State Fire Marshall.	N	N	N	N	Y	None	N/A
9 CSR 45-5.150 Fire Safety for Residential Habilitation for 17 or more People	This rule establishes fire safety requirements for residential habilitation homes serving seventeen (17) or more people funded through the Medicaid home and community-based waiver. The department delegates its authority for fire safety inspections under this rule to the Department of Public Safety, Division of Fire Safety.	4/30/2004	Y	No, however the rule needs to be updated with the office of the State Fire Marshall's recommendations for current best practice in fire safety. Discussions are underway with the Office of State Fire Marshall.	N	N	N	Y	Y	None	N/A
9 CSR 45-6.010 Guidelines for Membership on Regional Developmental Disabilities Advisory Councils	This rule establishes nomination and membership requirements for regional developmental disabilities advisory councils. This rule also describes the role of the Missouri Planning Council and its staff in the nomination process and in the recording of membership information.	12/30/1995	N	Yes, RACS have been discontinued. Upon further review by the department, the rule will be amended, or rescinded.	N	Y	N	Y	N	None	N/A

Department of Mental Health Periodic Rule Review

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9 CSR 50-2.010 Admission to Children's Supported Community Living	This rule prescribes admissions criteria, the application process and placement procedures for Children's Supported Community Living of the Division of Comprehensive Psychiatric Services.	3/30/1996	Y	No, rule is being updated.	N	Possibly, DMH staff will determine if rule can be amended to be less restrictive.	N	No, corrections will be made	Y	None	N/A
9 CSR 50-2.020 Guidelines for Conditional Release	This rule sets guidelines for implementation of section 632.385, RSMo and applies to all department facilities and private mental health facilities certified by the Division of Comprehensive Psychiatric Services to provide outpatient treatment.	8/30/2006	Y	No, rule will be updated as needed.	N	N	N	Y	Y	None	N/A
9 CSR 50-2.510 Admission to Adult Placement Program	This rule prescribes admissions criteria, the application process and placement procedures for the adult placement program of the Division of Comprehensive Psychiatric Services.	8/30/2006	Y	No, rule will be updated.	N	N	N	No, reference to DSM will be updated.	Y	None	N/A
9 CSR 60-1.010 Application for Client Research	This rule prescribes procedures by which applications for research involving any client or patient or any individual identified by virtue of being a former client or patient of the department are submitted and reviewed for approval.	2/28/2017	Y	N	N	N	N	Y	Y	None	N/A
9 CSR 60-1.015 Review of Research in Progress	This rule prescribes the procedures by which the Professional Review Committee may review and investigate research.	2/28/2017	Y	N	N	N	N	Y	Y	None	N/A
9 CSR 80-1.005 Civil Outpatient Detention and Treatment Program	This rule defines terms and establishes standards and procedures for program recognition, client admissions and discharges, and performance of civil outpatient detention and treatment programs.	4/30/1998	Y	No. Rule is being reviewed for possible amendments.	N	N	N	Y	Y	None	N/A

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Missouri Association of County Developmental Disabilities Services

August 30, 2016

Amber Daugherty
1706 East Elm St.
Jefferson City, MO 65102

Dear Ms. Daugherty:

We are submitting public comments for Department of Mental Health rules in Title 9 of the *Code of State Regulations* as a part of General Assembly's five year review of existing rules.

Before commenting on existing DMH regulations, we would like to express our appreciation for the efforts being made by the current division director to convert the Division's contracts, directives, guidelines and practices into state regulations. There are currently numerous proposed regulations in the informal comment stage. We appreciate that the current administration recognizes the need to establish proper regulations and create a basis in law for Division policies. The Division's prior practice of failing to comply with basic rulemaking has long been a concern to MACDDS members. Prospectively, we are hopeful that the Division will keep the following in mind as it seeks to convert its policies to rules:

1. The Supreme Court of Missouri has held that statements of general applicability must be promulgated as rules by a State agency to be valid, and this requirement cannot be circumvented by adoption of a contractual provision.
2. Incorporation by reference of documents, resources, reference materials into a State regulation is allowable, so long as the referenced material is "static."
3. The State Agency must comply with federal public notice and public process requirements when proposing/implementing Medicaid changes to payment rates.
4. The rulemaking process may not be circumvented by the creation of federal assurances.

Our comments Specific to DMH existing regulations follow.

9 CSR 10-5.180 Advance Directives

The rule is necessary, but it conflicts with state law and there is language on the same topic in DMH directives and contracts, none of which are consistent. The rule does require amendment.

DMH is not accepting of the primary care physician's Statement of Terminal Condition and is requiring numerous records to make an independent determination. The role of DMH is to determine the contracted provider is able to met the needs of a client with a terminal condition, reviewing a declaration to determine that it meets the requirements of the law (not the role of the DMH Medical Director), and communicate with an attending physician and/or client/guardian if there are questions regarding intent. It is not appropriate or allowable under the law for the DMH medical director to substitute his judgment for that of the attending physician, which would result in a denial of patient rights and is contrary to the statutory obligation to act in accordance with the declarant's expressed intent.

9 CSR 10-5.200 Reports of Abuse, Neglect and Misuse of Funds/Property

The rule is necessary, but does require amendment. The problem with this rule, and many of the DMH rules, is that there are multiple documents addressing this topic, many of which are not other rules, making it difficult to limit our comments to the content of the rule. For example, this topic is addressed in the following DMH documents: POS Contract; TCM Contract; 9 CSR 10-5.200 Abuse, Neglect and Misuse of Property/Funds; 9 CSR 10-5.206 Reporting of Events; DOR 2.205 Abuse and Neglect Definitions; 2.210 Placement Abuse and Neglect; 4.270 Reporting and Recording of Events; and Directive 4.070 Event Report Processing. Coordination and consistency of policy are needed.

9 CSR 10-5.206 Report of Events

The materials incorporated by reference are outdated. DMH has revised the event reporting form, but has neither rescinded the form contained in the rule nor promulgated a proposed amendment to the rule to incorporate the new reporting form.

9 CSR 10-31.011 Standard Means Test

This rule is necessary and requires amendment. The rule is in need of clarification.

Paragraph 8 “Charges for Long Term Care” – This paragraph specifically states charges are determined “only under this section” if the recipient requires long term care. This would seem to mean no other provision related to charges applies. It goes on to state that if a residential recipient is without a spouse, the provider shall consider all of the recipient’s real and personal property and charge all costs until the estate is reduced to the allowable amount for Medicaid eligibility. The provider shall apply all unearned income to the cost of services, except for the \$30/month allowance. Because the language is that **all** of the recipient’s property is to be considered, we believe this means earned income as well, although this section specifically refers to unearned income and fails to mention earned income. Our interpretation is supported by the fact that DMH calculates the clients’ wage assessments for residential clients who are employed. The regulation also says that income is to be applied to the “cost of services”, it does not say “room and board”, a term used elsewhere in the regulation, suggesting that cost of services means the cost for all services may be charged to the client (if not otherwise covered by Medicaid or another third party.)

Paragraph 10 addresses “working client,” and there are residential clients who are employed. The regulation implies residential clients do not work. Does this paragraph apply to a long term care client because paragraph 8 says charges are determined only under section 8? Paragraph 10 states that the provider shall apply to the cost of services 40% of the net earned income exceeding \$100/month, except where DMH is not paying room and board, and then the sliding scale applies. The phrase “except where DMH is not paying room and board” is difficult to interpret. We find it easier to substitute except when the resident is paying room and board to make it understandable. So if the client is paying room and board, the sliding scale applies to cover the cost of services. Conversely, when DMH is paying the room and board, the wage assessment would apply.

Clarification is needed. We believe it should clearly state that the agency has an obligation to collect for the cost of all services not otherwise reimbursed; and the agency is entitled to collect from earned income from a residential client via application of a wage assessment.

9 CSR 25-3.040 Fiscal Management

The rule is necessary, but out of date and contains obsolete material.

9 CSR 45-2.015 Prioritizing Access to Funded Services

This regulation requires clarification. It is unclear whether a non-Medicaid eligible consumer is scored for Priority of Need for access to services. ADA requirements, which apply to persons regardless of Medicaid status, would suggest that non-Medicaid eligible should also be served.

9 CSR 45-2.017 Utilization Review Process

This regulation is necessary, but there is ambiguity with regard to the respective rules of the ISP plan team and UR committee in determining plan services for consumers. The UR process articulated in this section also contains conflicting language. It states that if there is a new or increase in services it must go through the UR process, but it also states that it does not need to go through the UR process if there is no increase in the budget. Whether or not an increase in the budget occurs should be the prevailing factor.

(5) One (1) month prior to the proposed service plan and budget implementation, the service coordinator shall submit the signed service plan to the URC. This should be clarified to only occur when there is a new service or increase, etc. URC is not currently reviewing all plans.

(6) The URC shall consider a service/support for inclusion on a prioritized waiting list if the service/support meets each of the following criteria: Would this criteria also apply to service requests resulting in approval since it may not need to be added to wait list? This may be language leftover from the days when most requests were added to the wait list.

(9) Upon final action by the regional director or designee to approve, amend, or disapprove a service plan and budget, a copy of the final decision letter and the completed service plan and budget shall be provided within ten (10) days of the decision to the individual and/or responsible party, service coordinator, and provider(s) by regular mail, fax, or hand delivery. Should this language also specifically allow for electronic transmission? There is no provision in the procedure for due process. The individual should be afforded the opportunity to know the basis for the decision, to file an appeal to an entity or individual other than the person who made the decision, and to submit information in support of his/her appeal.

9 CSR 45-4.010 Residential Rate Setting

The residential rate setting regulation is and has been out of date for years. The existing rule was filed in 1995. The Division has changed its rate setting procedure many times since 1995, but without setting forth the formula in regulation, which the Division is required by law to do. And, there is no rate setting regulation that pertains to non-residential rate setting. Writing assurances with regard to rate setting into the Medicaid waivers is not adequate as authority for a change in rate setting methodologies.

9 CSR 45-5.110 Fire Safety for On-Site Day Habilitation

The division recently changed its service definitions so there is no distinction between on-site and off-site day habilitation. This change in service definition confuses the applicability of this CSR. The term "day habilitation provided on-site at the facility" as opposed to "on-site day habilitation" would clarify that it is the service provided on-site at the facility as opposed to the latter, which indicates the name of a service rather than a location. Use of the term "day" may no longer be appropriate as it can be provided at any time of the day or night.

Thank you for the opportunity to comment. Please feel free to contact me if you need clarification or wish to discuss any of these issues further.

Sincerely,

Jane Kruse

Jane Kruse, J.D.
On Behalf of MACDDS

Cc: MACDDS Members
Val Huhn, Division Director

Daugherty, Amber

From: Jane Kruse <jkruse@bcfr.org>
Sent: Wednesday, August 31, 2016 4:52 PM
To: Daugherty, Amber
Cc: lesmwagner@gmail.com
Subject: Public Comments - 5 Year Review of Existing Regulations

Follow Up Flag: Follow up
Flag Status: Completed

Ms. Daugherty:

On behalf of MACDDS, I am writing to supplement our comments filed earlier today with regard to 9 CSR 45-2.017 Utilization Review Process.

Section 9 CSR 45-2.017 (11)(A) pertaining to Utilization Review, provides that an individual participating in a Medicaid waiver program has appeal rights through both DMH and DSS. The regulation provides that a request for an appeal may be made to DSS, and a mailing address and a telephone number are provided to reach Participant Services for the purpose of requesting an appeal hearing. There is no information provided with how to file an appeal with DMH. When placing a call to the 800 number provided in the regulation, the options for the caller do not include information about filing an appeal. The options include 1) instructions for providers, 2) questions regarding coverage for Medicare, QMB or private insurance, and 3) collections. Because there is no option for a consumer who desires to appeal the UR committee decision, it is necessary to wait for an operator and request further guidance. Our experience has been that the individuals who answer the phones and those to whom the call is directed are not familiar with the regulation, the consumer's right to appeal the decision, to whom the appeal should be directed, or what to include in the request for an appeal.

The rights set forth in this regulation, which are a necessary part of a consumer's right to due process, are of no effect if there is no one capable or qualified to respond to the inquiry and assist a consumer in exercising his/her rights to an appeal.

Thank you for the opportunity to comment.

Jane Kruse, J.D.
On Behalf of MACDDS

RICHARD M. AUBUCHON

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LAWYER • LOBBYIST

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August 29, 2016

VIA HAND DELIVERY

Department of Mental Health

ATTN: Amber Daugherty

1706 East Elm St.

Jefferson City, MO 65102

VIA EMAIL:

Amber.Daugherty@dmh.mo.gov

ckadlec@senate.mo.gov

RE: Comments for Proposed Missouri Code of State Regulations (CSR) for the Missouri Department of Mental Health (DMH)

Periodically, as part of an overall legal service to my clients throughout Missouri, my firm reviews proposed Missouri regulations and submits comments during the public comment period, time permitting. The comments that follow are provided on behalf of the AuBuchon Law Firm, LLC. Pursuant to the Notice of Periodic Rule Review made in the Missouri Register, July 1, 2016, Vol. 41, No. 13, please accept the following comments pertaining to the proposed CSR from the DMH.

A review of the promulgated rules for DMH provides several areas the DMH Division of Developmental Disabilities (DDD) could support the public needs of the developmentally disabled. The Missouri Department of Social Services (DSS) delegates to DMH DDD the programs described in DMH CSR.

Regulations In Need Of Promulgation Or Revision

Based upon the requirements set forth by RSMo. 630.050.1, 630.655.1, and 9 CSR 10-1.010 (6), DMH must have properly promulgated rules when standards for residential, day programs, or specialized services are prescribed for third-party or external business associates. DMH shall promulgate rules for "contracts," and "other relevant requirements associated with federal law." The following are not intended to be exhaustive; DMH DDD is responsible for the enrollment of providers, the quality assurance oversight of providers delivering specialized services, the development and revisions of those providers' contracts, approving consumer service requests eligible for state federal reimbursements, and generally administering the federal Medicaid Waiver programs as delegated to DDD by DSS MO HealthNet.

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- I. **Policies or Standards Which Affect Costs of Service.** It is my understanding that DMH DDD does not use any properly promulgated rate setting methodologies when reimbursing vendors for the delivery of waiver services.
 - i. 9 CSR 45-4.010 provides the actual "Residential Rate Setting" procedures "...for establishing per-diem base rates for certain waiver and nonwaiver residential providers which accept persons with mental retardation under the department's community placement program." However, DDD does not use this CSR for setting residential service rates. Instead, DDD relies upon the rate setting methodologies described in the Medicaid waiver applications approved and on file with the federal Centers for Medicaid/Medicare (CMS). The waiver applications do not reference 9 CSR 45-4.010, which has been effective in the current form since December 30, 1995.
 - ii. Only one of the waiver applications provides residential services for consumers on an ongoing basis. The waiver application's residential rate setting methodologies, *DD Comprehensive Waiver – Appendix I: Financial Accountability I-2: Rates, Billing and Claims*, clearly describes "Rate Determination Methods" not filed in any Missouri statute or regulation. The appendix lists the rate setting methods used by DDD for "Residential Habilitation Services" as being "...based on the individual's Rate Allocation Score derived from the Support Intensity Scale, (SIS) licensed [sic] by the American Association on Intellectual and Developmental Disabilities, or other state approved assessment tool; herein referred to an 'assessment' as it relates to residential rates."

The SIS is not promulgated as a rule in Missouri, and 9 CSR 45-4.010 does not include any reference to the SIS. The "or other state approved assessment tool" isn't identified, or filed as an official state document. The only measurable description of how DDD applies the SIS appears in "*Division Guideline #15*" (available at: <http://dmh.mo.gov/docs/dd/guideline15.pdf>). The guideline is clearly a policy for "All Regional Office SC [Service Coordination] Staff and TCM [Targeted Case Management] Provider Staff". The guideline affects public and private interests when it establishes the "SIS Review Process" for assessing and scoring a service recipient's support needs. It prescribes policy for public and private entities because DDD, local county developmental disabilities boards, and private not-for-profit entities perform all of Missouri's TCM. The guideline clearly constitutes an administrative rule as a statement of general applicability.

The guideline demonstrates the need for DDD to have properly promulgated rules when it provides, "In the event that the individual/guardian and the Regional Director do not reach agreement on the action to be taken, the individual/guardian may appeal to the Division Director or designee. The decision of the Division Director or designee is final." It is my belief the appeal process described in the guideline may violate the Due Process Clauses of the United States and Missouri Constitutions, 42 Code for Federal Regulations (CFR) 431.210 and RSMo. 208.080. 42 CFR 431.200 provides "...procedures for an opportunity for a hearing

if the State agency...takes action...to suspend, terminate, or reduce services..."; and, 42 CFR 431.210 requires notice be made to an affected individual that includes "[t]he specific regulations that support, or the change in Federal or State law that requires, the action...". RSMo. 208.080 provides appeal rights for MO HealthNet service recipients when adverse actions are made by the respective division; RSMo. 208.080.7 provides "...the director of the division shall determine all questions presented by the appeal, and shall make such decision as to the granting of benefits or services as in his or her opinion is justified and is in conformity with the provisions of the law." Within either federal or state laws, no notice or determination could be validly issued as no such laws exist supporting the use of SIS.

- iii. The waivers DDD administers on behalf of DSS MO HealthNet have not been properly promulgated directly or indirectly through incorporation by reference. Even if DSS attempted to incorporate the waivers by reference, the waivers are clearly not promulgated by DMH, as required by RSMo. 630.050.1, 630.655.1 and 9 CSR 10-1.010 (6). A rule which is not properly promulgated is void under Missouri law. DDD rejecting 9 CSR 45-4.010 and relying on the SIS and waiver residential rate setting methods rises to the level of arbitrary, capricious, and financially detrimental to local government and private residential service vendors contracting with DDD.
- iv. Should the DSS MO HealthNet 13 CSR 70-3.030 (3)(A) 7. incorporation by reference for a "MO HealthNet provider manual" be construed as granting waiver program authority for DDD, no public or private fiscal notes appear to exist. Regardless if the public and private fiscal notes exist, the incorporation by reference would be still be invalid for using the SIS to set residential vendor rates because the "other state approved assessment tool" isn't even properly identified. Further, the rate setting methodologies provided in the waiver's appendix are not described in any MO HealthNet provider manual or bulletin.

II. Contracts and Funding for Purchased Services. The *Contract For Services – Purchase of Service Program for the Division of Developmental Disabilities* (available at: <http://dmh.mo.gov/dd/provider/docs/poscontract.pdf>), is an extensive contract containing quality assurance expectations, training obligations, documentation requirements, service descriptions which all effect vendor payments for services approved and purchased by DMH DDD. The attributes of the vendor contract have not been promulgated by DMH as required by RSMo. 630.050.1, 630.655.1 and 9 CSR 10-1.010 (6).

- i. The contract created by DDD lacks the reasonable due process considerations for vendors provided by RSMo. 630.725. 42 CFR 431.51 provides participants will have the "free choice of provider," as participants may select any willing and qualified provider to furnish waiver services included in the service plan. The contract terms include, "4.2.5 The Department shall have the right, at its sole option, to renew the contract." This term, as an example, illustrates how DDD has improperly granted itself authorities that would violate the assurances made to CMS, and violate waiver participants' rights to freely choose to receive their

services from qualified providers. Without following the reasonable due process procedures of RSMo. 630.725 as protections, vendor contracts may be effectively terminated with or without cause. Because of the impact upon waiver participants, the contract provision likely violates the Due Process Clauses of the United States and Missouri Constitutions, 42 CFR 431.210 and RSMo. 208.080. Even if DDD was allowed to not renew vendor contracts as an alternative to properly terminating contracts, RSMo. 630.725.1 provides for when and how the department may deny an application for a license to provide services. Assuming the vendor was in compliance, the contract must be granted thereby negating the contract expiration.

- ii. The contract creates substantial training obligations for vendors. The expenses incurred by vendors because of the contract's training mandates are not reimbursed by DDD. Without any properly promulgated rate setting methodologies, it is impossible to know if vendor service rates account for the ever-increasing staff training demands arbitrarily set by DDD. It is openly acknowledged by DDD, vendors are under-funded with inadequate rates for the reimbursement of waiver services.
- iii. The Missouri Supreme Court provided clear understanding in *NME Hospitals, Inc. v. Dep't of Social Services*, 850 S.W.2d at 75 (Mo. banc 1993). Agencies are unable to evade the rulemaking procedures by contract. If an agency statement "cannot be given effect as a rule, it cannot be given effect as a valid term of a contract." *Id.*

III. Other Relevant Requirements Associated with Federal Law. The waivers administered by DMH DDD are ultimately approved and monitored for compliance by the CMS. These federal programs significantly impact Missouri citizens, state and local governmental entities, in addition to private business associates and third-party vendors. DMH DDD has not promulgated the rules necessary for the proper administration of these federal programs such that Missouri's assurances to CMS have the force of law as required by 42 CFR 431.210, RSMo. 208.080, and 9 CSR 10-1.010 (6).

- i. The waivers provide participants access to home and community-based services as alternatives to institutionalization. DDD routinely denies, modifies, and reduces waiver service requests for participants without any promulgated authorities. The arbitrary limits placed on participant access to services violate the Due Process Clauses of the United States and Missouri Constitutions, 42 CFR 431.210 and RSMo. 208.080. There is a complete lack of criteria to be used by Utilization Review Committees and Regional Office Directors means no adverse decision may be taken because notice and consumer appeal rights require either action be supported by law.
- ii. The rules provided by 9 CSR 45-2.017, or any other Missouri statute or regulation, lack any criteria for the Utilization Review Committee or DDD Regional Office Director to approve, amend, or deny a waiver participant's service request. The Missouri Supreme Court, in *Young v. Dep't of Social Services*, 284 S.W.3d 553, 554 (Mo. banc 2009), established requirement of DSS to promulgate criteria when making individual determinations. The court was clear, "...it is the agency's policy of what criteria and methodology to apply in making individualized

- determinations...application procedure, the required standard of proof, the type of evidence required, what behaviors qualify, how frequent and recent the behaviors must be, and whether professional treatment is required are all examples of eligibility requirements that are generally applicable to all children.” *Id.*
- iii. The service requests of waiver participants directly impact the Missouri General Assembly’s budget and planning processes. Without adequate tracking or planning, DDD cannot demonstrate the waivers’ costs for supporting participants. DDD maintains a sophisticated database of consumer service authorizations. However, the database does not maintain a record of when a consumer service request is partially approved or denied. This means consumers have requested services, but without any rules for approvals/denials their true service needs are unmet and exist as funding liabilities unknown to the General Assembly. 9 CSR 45-2.017 (8) should be amended to include the director or designee shall document all approvals, denials, or amendments in a readily searchable database to ensure all service requests acted upon are quantifiable. It is not understood why DDD would not internally track all amended requests and denials.
- iv. Nationally recognized accredited vendors contracting with DDD are exempted from certification and survey by DDD under 9 CSR 45-5.010 (4). Despite this clear exemption, DDD reviews accredited vendors because DDD claims it cannot be certain nationally recognized accrediting bodies ensure DDD compliance with its federal assurances. When DDD disregards the clear instructions of 9 CSR 45-5.010 (4) because of the “federal assurances,” DDD is ignoring the fact DDD created those assurances; the waiver applications provide “[t]he State has broad discretion to design its waiver program to address the needs of the waiver’s target population.” 42 CFR 441.302 (2) provides, “Assurance that the standards of any State licensure or certification requirements are met for services or for individuals furnishing services that are provided under the waiver...” [emphasis added] Even if DDD did not create the assurances, the assurances become requirements associated with federal law and thereby are required to be promulgated as rules.

Additional Case Law that applies, though may not actually further any of the points:

The Administrative Hearing Commission provided understanding for when an agency requirement was a rule in *Whispering Oaks RCF Management Company, Inc. v. DHSS*, AHC Case No. 09-0757 DH, at 43 (Dec. 7, 2012). In *Whispering Oaks*, the Commission found DHSS exceeded its authority when DHSS rejected the petitioner’s application for a license on the grounds that he failed to include certain documents. The regulation required that an applicant for licensure provide “satisfactory proof” that he was 21 years old, had graduated high school, and was of good moral character. *Id.* at 42. In connection with this regulation, the DHSS application instructions required applicants to include a copy of a birth certificate or passport, a copy of a high school diploma, and letters of reference from two people who had known the applicant for three years. *Id.* The Commission found these “enhanced documentation requirements...were statements of general applicability...that implemented or interpreted law or policy.” *Id.* at 143. Therefore, they

August 29, 2016

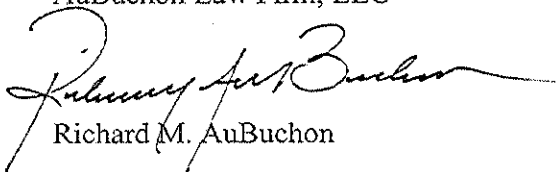
Page 6

were "rules" under the Missouri Administrative Procedure Act. *Id.* at 142-43. In other words, the agency was interpreting what constituted "satisfactory proof" and was, therefore, required to promulgate its interpretation as a rule.

Please consider the above comments and make changes to address these comments if at all possible. I appreciate your time in reviewing these comments and thank you for the opportunity to have input on these important matters now and in the future.

Sincerely,

AuBuchon Law Firm, LLC

A handwritten signature in dark ink, appearing to read "Richard M. AuBuchon", written in a cursive style.

Richard M. AuBuchon

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APPENDIX

Responses to comments submitted by MACDDS

- **9 CSR 10-5.180 Advance Directives** – The Department of Mental Health (DMH) agrees that this rule, as well as corresponding Division Directives, are in need of amendment. Specific to the commenter's concern, the Division of Developmental Disabilities (DD) has been working to update the Division Directive regarding Do Not Resuscitate Orders and has recently posted an amended version for public comment. A proposed CSR amendment on this same topic is also being discussed. The DMH disagrees that current regulations are in direct conflict with any Missouri law, and is unable to respond regarding conflict with specific legal authority as none is provided by the commenter.
- **9 CSR 10-5.200 Reports of Abuse, Neglect and Misuse of Funds/Property** – The DMH recognizes there are many sources that touch on the topic of abuse, neglect, and misuse of funds/property. However, each source has a specific purpose meant to protect the various individuals serviced by the DMH and is necessary for administration.
 - Contractual provisions are necessary to outline contractor expectations, as well as provide a remedy for the department when there are allegations of abuse, neglect, or misuse of funds/property against a contractor.
 - 9 CSR 10-5.206 on reporting of events does refer to reports of complaints of abuse, neglect, and misuse of funds/property, but also has a much broader purpose. Specifically, this rule is to be used for reporting certain events beyond that which would be allegations of abuse, neglect and misuse of funds/property. There is no apparent conflict between 9 CSR 10-5.200 and 9 CSR 10-5.206, and each has a specific function.
 - Department Operating Regulations (DORs) are only applicable to DMH state operated facilities and serve as internal guidance for DMH employees working in these facilities. DORs are adopted pursuant to the specific authority granted in section 630.050, RSMo and 9 CSR 10-1.010(6) and need not be published in the Missouri Register or the Code of State Regulations. There are no apparent conflicts between other legal authority and the referenced DORs.
 - The DMH utilizes Division Directives to provide in-depth, technical guidance for issues currently addressed in rule. Due to the complication and scope of services offered by the DMH by contracted providers, the use of Division Directives is necessary to ensure the safety and care of individuals, as well as to instill consistency for quality of services offered among providers. Division Directives are posted for public comment on the DMH website and are thoroughly vetted with stakeholders prior to implementation or amendment. Division Directives do not conflict with Missouri Revised Statutes or Code of State Regulations. The department's goal is always to move technical Division Directive guidance into rule. However, this process is complicated by the fact that technical care and safety standards are constantly evolving, and can vary depending on an individual's specific needs. The care and safety of an individual is priority when issuing such Directives.
- **9 CSR 10-5.206 Report of Events** – DMH acknowledges that the event reporting forms incorporated in the rule by reference are outdated and do not reflect current practice. The report forms have been revised over the years in an effort to obtain pertinent information related to reportable events. Check boxes have been added to assist providers in identifying information needed by DMH staff to make informed decisions related to reportable events. When the changes were made, all providers were notified via policy memorandums or other means to ensure the correct forms were utilized and understood by reporters. DMH staff members are reviewing the rule and its accompanying forms to make necessary changes. Providers and other interested parties will have the opportunity to comment on the revised draft when it is posted to the DMH website and/or disseminated by email. Comments can also be made through the formal rulemaking process after the rule is filed.
- **9 CSR 10-31.011 Standard Means Test** – Section 9 CSR 10-31.011(8) is only used to determine long-term care charges for a recipient who requires long-term care. Long-term care is specifically defined in 9 CSR 10-31.011(1)(I). Long-term residential treatment is a separate service category than treatment services provided by the community. Community services are defined in 9 CSR 10-31.011(1)(C). Section 9 CSR 10-31.011(8) does not prohibit application of all other rule sections to long-term care as the commenter suggests. However, DMH agrees that this provision is in need of clarification.

Standards for earned income of working clients are addressed in 9 CSR 10-31.011(10). This section includes a provision regarding recipients who require long-term care, as well as others who do not. Section 9 CSR 10-31.011(8) does not prohibit the application of section (10) to long-term care recipients as the commenter suggests. A recipient who works and resides in long-term residential treatment can be

APPENDIX

charged 40% of amount earned over \$100 only up to the cost of total care by the residential provider. Working recipients who are not in long-term residential care are assessed an SMT Sliding Fee Scale to determine whether to be charged.

In regards to the suggested substitute language, the DMH disagrees. There are circumstances in which the “resident” (him/herself) is not specifically paying for room and board, but a non-department resource or third party may be responsible for paying room and board. Further, if a recipient of long-term care is paying the full room and board cost, the DMH does not apply the SMT Sliding Scale and any earnings would belong to the client. However, the DMH agrees that provisions within sections (8) and (10) are in need of clarification and will consider the provided comments during that process.

- **9 CSR 25-3.040 Fiscal Management** - The DMH disagrees that the rule contains obsolete material. The DMH cannot respond specifically as the comment does not provide details regarding the alleged obsolete or out dated material.
- **9 CSR 45-2.015 Prioritizing Access to Funded Services** – The DMH does not score for priority of need if an individual is not Medicaid eligible. DMH will be updating this rule and will clarify the requirements regarding individuals who are not eligible for Medicaid. County Boards and other stakeholders will have an opportunity to review and comment on the proposed draft amendment.
- **9 CSR 45-2.017 Utilization Review Process** – A Utilization Review is triggered if an individual’s service plan is amended to add a new service. Additionally, a review is triggered if the individual’s service plan is amended by increasing the dollar amount of a specific service. If neither of these triggering events occur, and there is no increase in the total budget, a Utilization Review does not occur. The DMH disagrees that a review should only occur if there is an increase in budget, as a change of services is also an event that needs to be reviewed. This section of the rule is being updated and clarification will be made as to the Utilization Review process.

The DMH does not utilize waiting lists except when an individual is waiting to be approved for participation in a waiver. After waiver enrollment, the individual is not placed on a waiting list for services. The request to add a new service or increase the level of a current service is addressed during individual support planning, and is approved through Utilization Review. This section of the rule is being updated to reflect current practice.

The DMH will consider whether electronic transmissions would be appropriate for use in the Utilization Review Process; however, federal privacy regulations must be considered when determining whether electronic transmissions are an acceptable and practical method of communication for this process.

A final decision letter is issued to an individual upon a regional director’s approval, amendment of, or disapproval of a service plan or budget. This final letter includes the reasons for disapproval or amendment. Additionally, this final letter includes information on the appeal process. The DMH appeal process is outlined in 9 CSR 45-2.020. The DMH has no immediate control over dissatisfaction with the Department of Social Services (DSS) appeal process.

- **9 CSR 45-4.010 Residential Rate Setting** – Residential rate setting is done through approval of the Centers for Medicare and Medicaid Services (CMS) Waiver Application. A copy of the approved waiver application can be located on the Division of DD website. DMH recognizes this rule is out of date and is in the process of drafting an amendment to be consistent with the rate setting methodology utilized by CMS. Up to June 2, 2017, DMH accepted input on a draft amendment to this rule. The DMH is currently reviewing comments received and will make any necessary changes to the draft.
- **9 CSR 45-5.110 Fire Safety for On-Site Day Habilitation** – The DMH did recently change its service definition and agrees that an amendment to this rule is necessary. A current draft amendment updates terminology to be consistent with the current CMS-approved waivers and with revisions recommended by the Department of Public Safety Division of Fire Safety. This draft is posted on the Division of DD website for comment until July 7, 2017.

APPENDIX

Responses to comments submitted by Richard AuBuchon

- **9 CSR 45-4.010 Residential Rate Setting** – Residential rate setting is done through approval of the Centers for Medicare and Medicaid Services (CMS) Waiver Application. A copy of the approved waiver application can be located on the Division of Developmental Disabilities (DD) website.

Division Guideline #15 regarding the Supports Intensity Scale (SIS) Review Process is not an appeal process. It is an avenue to trigger a review when it is believed that there has been a change of an individual's support needs. This review process is not an adverse action taken by the Department of Mental Health (DMH) in regards to an individual's services and therefore, does not trigger the requirements suggested by the commenter.

DMH recognizes this rule is out of date and is in the process of drafting an amendment to be consistent with the rate setting methodology utilized by CMS. Up to June 2, 2017, DMH accepted input on a draft amendment to this rule. The DMH is currently reviewing comments received and will make any necessary changes to the draft.

- **9 CSR 10-1.010(6) General Organization** – The DMH disagrees that its use of contracts are in violation of any legal authority. Specifically, the contract provisions referenced by the commenter have not been determined to be principles of general applicability. Decisions regarding contract renewal or termination are made separate of and are distinct from licensure or certification of a provider agency. Both actions comply with applicable legal authority.

Overall, the DMH recognizes that promulgation of new rules is needed. The DMH is continuously working to promulgate rules that reflect current practices and to comply with section 630.050, RSMO and 9 CSR 10-1.010. Rules that are promulgated by the DMH are done through the process prescribed by state statute and the Secretary of State's Office.

- **9 CSR 45-2.017 Utilization Review Process** –The Utilization Review Committee recommends approval of a service when an Individual Support Plan identifies an unmet need. In order to be approved for a new or additional service, there must be documentation of the need for that service as described in the service definition of the approved waiver application, agreement that the waiver service is the most appropriate way in which that need can be met, and technical compliance with the specific service definition requirements. The basis for this process is outlined in 9 CSR 45-2.017. This rule is being updated to add clarification regarding current practice.

The Division of DD modifies an individual's services in compliance with 42 CFR 441.725, Person-centered service plan and 9 CSR 45-3.010, Individualized Habilitation Plan Procedures.

The DMH is currently implementing new procedures to track service requests and approvals.

- **9 CSR 45-5.010(4) Certification of Medicaid Agencies Serving Persons with Developmental Disabilities** – The Office of Licensure and Certification does not complete any survey activity in accredited programs, unless there is a complaint regarding the operation of the agency. Section 630.655, RSMo tasks the DMH with implementing regulations and processes that respond to the department's responsibility to meet the conditions of third party reimbursement (i.e. federal requirements for Medicaid funding via participation in the Home and Community Based Services Waiver program). Certification is only one part of the integrated system the department has developed to respond to its responsibility to assure CMS of adequate safeguards to ensure participant health and welfare for all types of providers. Accreditation can be used in lieu of certification comprehensive surveys; however, service delivery monitoring systems in place to meet our federal assurances are broader than just the certification process. These integrated systems are outlined in the approved Medicaid Waiver application made to CMS.